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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.C., et al., Persons Coming
Under the Juvenile Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.C.,

Defendant and Appellant.

B305224

(Los Angeles County
Super. Ct. No. CK92614B-C)

APPEAL from orders of the Superior Court of Los Angeles
County, Annabelle G. Cortez, Judge. Affirmed.

Caitlin Christian, under appointment by the Court of
Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kim Nemoy, Assistant County Counsel, and Kimberly Roura, Senior Deputy County Counsel, for Plaintiff and Respondent.

P.C. (Mother) appeals from a juvenile court order terminating her parental rights over her daughter A.C. and her son A.R.-C. (collectively the Minors).¹ We consider whether the juvenile court erred when concluding the parent-child relationship exception did not prevent the termination of Mother's parental rights.

I. BACKGROUND

A. *Removal of the Minors and Dependency Jurisdiction*

In September 2016, the Los Angeles County Department of Children and Family Services (the Department) received separate referrals about the health and safety of each Minor. At the time, A.C. was two years old and her step-brother was 10 months old. The Department sought to remove the children from Mother's custody and the juvenile court ordered them detained in January 2017.

Five months later, in February 2017, the juvenile court sustained a multi-count second amended dependency petition and asserted jurisdiction over the Minors pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).² In sustaining the petition, the court found A.C. suffered a broken leg while in Mother's care and Mother repeatedly struck A.C. about her hands, face, and head, including on one occasion punching her young daughter in the face and giving her a black eye. The

¹ By the same order, the juvenile court also terminated the parental rights of each child's father. Neither father is a party to this appeal.

² Undesignated statutory references that follow are to the Welfare and Institutions Code.

court also found Mother emotionally abused A.C. by isolating her in a room alone (believing the young child was “flirting” with Mother’s romantic partner at the time), which slowed the child’s motor development. In addition, the court found Mother endangered the health and well-being of both children by maintaining a relationship with A.R-C.’s father despite a history of domestic violence, which on occasion had resulted in Mother suffering bruises and injuries to her face, back, and body.

The juvenile court ordered the Minors suitably placed. In March 2017, the Minors were placed with A.R-C.’s paternal aunt (the paternal aunt) and her husband. The court also ordered various services for Mother, including a domestic violence support group, anger management classes, parenting classes, and individual counseling to address, among other things, child safety and parenting. The court granted Mother monitored visitation.

After the juvenile court assumed jurisdiction over the Minors, the Department learned of two serious incidents of domestic violence, one preceding the jurisdiction hearing and one following it. Two weeks before the adjudication hearing, A.R-C.’s father stabbed Mother in her side and legs; in order to protect A.R-C.’s father from prosecution, Mother filed a false police report attributing her injuries to a mugger. Then, less than two months after the adjudication hearing, Mother was hospitalized and underwent emergency surgery after A.R-C.’s father stabbed her multiple times with a knife and beat her with a hammer.³

³ A.R-C.’s father was arrested and charged with attempted murder. Mother refused to cooperate with the prosecution of the criminal case. A.R-C.’s father ultimately pled guilty to the attempted murder charge and was sentenced to 10 years in prison.

B. Mother's Case Plan Performance and the Termination of Reunification Services

The Department's initial reporting during the post-adjudication review period indicated she had been "somewhat compliant" with her case plan. She was participating in all court-ordered services, but her attendance was inconsistent. The Department opined Mother had not developed any insight into the safety risks that brought the family to the Department's attention: Despite suffering repeated and increasingly serious injuries at the hands of A.R.-C.'s father, Mother continued to have contact with him and was dishonest with the Department about the relationship.

As to visitation, the Department reported Mother had been consistent in her monitored visitation with the Minors and appeared to be "well bonded" to them. Though the visits had been consistent, Mother routinely had trouble managing both children despite having completed two 12-week parenting programs.⁴ Indeed, at times, Mother's inability to manage both children simultaneously put the children at risk of serious harm—for instance, allowing A.C. to run away from her without taking any effective action, leaving it to the social worker to run after A.C. and protect her from harm.

As the date for the 12-month review hearing approached, Mother's participation in court-ordered programs remained inconsistent but she showed signs of developing an

⁴ The Minors both had special needs. A.C. had been diagnosed with Post Traumatic Stress Disorder (PTSD) and A.R.-C. had been observed to have multiple features consistent with autism.

understanding of the risks that domestic violence posed to the health and safety of her children. As a result, at the 12-month review hearing in November 2017, the court continued Mother's reunification services, finding that although her participation in her case plan had been "partial," she consistently visited the Minors and had made significant progress in resolving the problems that led to the assumption of dependency jurisdiction.

Mother's progress, however, proved to be "short lived." Over the course of the next eleven months, Mother's participation in her court-ordered programs remained inconsistent. In addition, she continued her relationship with A.R-C.'s father in contravention of an active restraining order and continued to be dishonest with the Department about that relationship. The Department found Mother's "complete lack of understanding of domestic violence and its consequences" placed her at high risk of again finding herself in an abusive relationship, with all the attendant risks to the Minors.

Observers beyond Department social workers also expressed concerns about Mother's ability to parent her children. For example, a coordinator from the regional agency providing A.R-C. with services addressing his autism expressed "grave reservations" about Mother's ability to understand her son's autism and to follow through on the services needed to address his condition. The coordinator also related that the representative from A.R-C.'s school district expressed concern over Mother's tendency to be easily distracted. The foster parents taking care of the Minors, on the other hand, maintained a safe and stable home; met the Minors' medical, dental, educational, and mental health needs; and had developed a "strong" bond with the Minors.

In October 2018, the juvenile court, having found Mother's participation in the ordered services remained only "partial," terminated her reunification services and appointed the paternal aunt as the holder of the Minors' educational rights. This court affirmed the juvenile court's termination of Mother's reunification services. (*P.C. v. Superior Court* (Jan. 18, 2019, B293170) [nonpub. opn.])

C. Proceedings Leading to the Termination of Parental Rights

Over the course of the next 16 months, there was some improvement in Mother's interaction with the Minors, as the juvenile court acknowledged at a hearing in June 2019. The agency supervising Mother's therapeutic visits reported Mother was attentive and affectionate and the Minors responded positively to Mother and appeared comfortable in her presence. Similarly, the maternal great grandmother, who monitored Mother's visits for more than a year, agreed the Minors appeared comfortable in Mother's presence.

Despite this improvement, Mother's parenting remained problematic. On one occasion, for example, A.R-C. fell on his head while in Mother's care and suffered two bumps on his head that were tender to the touch; Mother, however, did not seek medical attention and appeared "nonchalant" about the incident. (The foster parents took A.R-C. to the doctor where he underwent an imaging scan that revealed no serious problems. In addition, as was the case during the reunification period, Department social workers observed Mother was unable to handle both Minors at the same time. According to one Department social

worker, Mother routinely placed most of her focus and attention during the visits on A.R-C. and would pay less attention to A.C.

The foster parents also noticed A.C. would display symptoms of anxiety (she would pick at her skin and scratch her hands constantly) before and during scheduled visits with Mother. These symptoms subsided when Mother's visits decreased. The foster parents also witnessed increased agitation and aggressive behavior in both children, particularly A.C., following visits with Mother. The Minors' therapists also reported the visits with Mother had negative effects on the children's behavior.

The juvenile court appointed a clinical and forensic psychologist, Shelia Morris (Morris), to evaluate Mother's mental health.⁵ Morris, who met three times with Mother between May and September 2019, found she had not yet taken responsibility for her part in why the Minors had been found dependent children. As Morris later explained to the juvenile court, a domestic violence victim and parent like Mother who does not take responsibility for what happened in the relationship and/or minimizes the effect of the violence on herself and her children

⁵ Morris was appointed in connection with Mother's section 388 request for a restoration of reunification services. Morris, Mother, and the maternal great grandmother testified at the hearing on the section 388 petition. While the juvenile court found Morris' testimony credible, it found the testimony of Mother and the maternal great grandmother less so. The court ultimately denied the petition and the court would later adopt its findings in connection with Mother's section 388 petition when terminating Mother's parental rights.

places both herself and her children at “significant” risk of future intimate partner violence.

Morris’s observations of Mother’s interactions with the Minors also mirrored those of Department social workers and the foster parents. At the first joint session, although Morris observed the children appeared “comfortable” with Mother and enjoyed an “amicable” relationship with her, she found Mother to be “overwhelmed” by the task of managing her children. According to Morris, Mother’s attempt to structure the environment was “disorganized and confusing” and at odds with the parenting training she had received. Although Morris noted an improvement in how Mother related to and parented her children at the second joint session, Morris testified that on each occasion she had to intervene by either running after one of the children or watching one of the children while Mother tended to the other. In Morris’s opinion, Mother was not ready to care for the Minors in her home without assistance.

As for the foster parents, the Department consistently reported the Minors were thriving in their home due to the strong bond they had formed with the foster parents and their (non-foster) children. In the Department’s view, the foster parents provided the Minors with a “safe, happy, and loving environment.”

The Department’s assessment of the foster parents was shared by others. The paternal grandparents told a Department social worker that A.C. was happy in the care of the foster parents and that to remove her from their care would be “traumatic” and “detrimental to her mental and emotional well-being.” The maternal great grandmother told a Department investigator that the foster parents were doing a “great” job with

the children, were “stable,” and were willing to give the children a “good home.” The maternal great grandmother, while acknowledging Mother’s love for her children, expressed concern about Mother’s ability to care for the Minors on her own. A.R-C.’s therapist believed the foster parents’ “persistence, availability, and consistence” had played a “critical role” in his recovery from previous trauma.” A.C.’s therapist also recognized the foster parents were committed to helping her overcome the trauma she had suffered.

In March 2020, the juvenile court held a section 366.26 hearing to decide on a permanent plan for the Minors and consider termination of Mother’s parental rights.⁶ Counsel for the Minors and the Department urged the court to terminate Mother’s parental rights and make adoption the permanent plan. Mother’s attorney opposed termination of parental rights, arguing an exception to the statutory preference for adoption applied because Mother had been consistent in her visitation and that there was a bond between Mother and her children. Mother asked the court to order legal guardianship instead.

The juvenile court ordered Mother’s parental rights terminated, emphasizing the Minors had “emotional, developmental and behavioral needs that require[d] stability, . . . consistency and structure.” The court found that throughout the course of the dependency proceedings those needs

⁶ The court admitted into evidence the Department’s exhibits from the section 388 hearing, which included 19 of its reports filed with the court between January 2019 and January 2020, plus Morris’s reports on her three sessions with Mother. Mother did not introduce any exhibits.

had been provided by the foster parents, not Mother. Although Mother had been consistent in her visitation and had made some progress as a parent, she had not occupied a parental role in her children's lives because she did not progress beyond monitored visitation and, despite years of counseling, still needed direction from others when it came to caring for her children. While the court acknowledged positive interactions between Mother and the Minors, it found those interactions were outweighed by the "invaluable" stability and care provided by the foster parents.

II. DISCUSSION

The juvenile court did not err in concluding Mother did not carry her burden to show the parent-child relationship exception applied. To successfully invoke the exception, Mother needed to show two things: she maintained regular visitation and contact with the Minors, and she occupied a truly parental role in her children's lives, not just a friendly or loving role, such that termination of parental rights would greatly harm the children by depriving them of a substantial, positive emotional attachment. Proof of the second of these elements was lacking here.

A. *Termination of Parental Rights and the Parent-Child Relationship Exception*

"The section 366.26 hearing is a critical late stage in a dependency proceeding. The child has been under juvenile court jurisdiction for an extended period following the dispositional order, and the court has held one or more review hearings to consider a return to parental custody. (See § 366.21.) At the section 366.26 hearing, the focus shifts away from family

reunification and toward the selection and implementation of a permanent plan for the child If adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child. (§ 366.26(c)(1); *In re Celine R.* (2003) 31 Cal.4th 45, 53[].)” (*In re S.B.* (2009) 46 Cal.4th 529, 532, fn. omitted.)

Mother invokes the parent-child relationship exception, codified at section 366.26, subdivision (c)(1)(B)(i). In relevant part, that statute provides: “[T]he court shall terminate parental rights unless . . . [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” Mother had the burden to prove the exception applied. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395 (*Anthony B.*); *In re K.P.* (2012) 203 Cal.App.4th 614, 621 (*K.P.*)).

To meet her burden, Mother was required to do more than show the Minors would receive some benefit from continuing a relationship maintained during periods of visitation. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [“To overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be *greatly* harmed”] (*Angel B.*)). Even if parent-child contact has been loving and frequent, and notwithstanding the existence of an “emotional bond” with the child, Mother must show she occupies “a parental role” in the Minors’ lives. (*In re Noah G.* (2016) 247

Cal.App.4th 1292, 1300 (*Noah G.*); accord, *K.P.*, *supra*, 203 Cal.App.4th at 621.) For this reason, a parent-child relationship that satisfies the section 366.26, subdivision (c)(1)(B)(i) exception characteristically (though not necessarily) arises from day-to-day contact between the parent and child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

We review the trial court's decision on the applicability of the parent-child exception by employing a hybrid standard of review: "We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*Anthony B.*, *supra*, 239 Cal.App.4th at 395; see *K.P.*, *supra*, 203 Cal.App.4th at 621-622 [discussing the hybrid standard].) When deciding whether a parent carried his or her burden, we take into account the age of the child, the portion of the child's life spent in the parent's custody, the positive or negative effect of interaction between the parent and child, and the child's particular needs. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937-938 (*Jason J.*); *Angel B.*, *supra*, 97 Cal.App.4th at 467.)

B. Termination of Parental Rights Here Was Not Error

The record sufficiently supports the juvenile court's determination that the requisite beneficial *parental* relationship did not exist between Mother and the Minors. There was certainly evidence of Mother's love and affection for her children, but there was no adequate evidence she occupied a parental role in their lives. The foster parents, not Mother, helped the Minors grow, develop, and cope with their special needs (PTSD and

autism) on a day-to-day basis. (See, e.g., *In re Breanna S.* (2017) 8 Cal.App.5th 636, 648 [evidence that children enjoyed the mother’s monitored visits fell “far short of demonstrating a substantial emotional attachment that would cause the children to suffer great harm if severed”]; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827 [affirming order terminating parental rights where the interactions with the father were “pleasant and emotionally significant” to the child, but bore “no resemblance to the sort of consistent, daily nurturing that marks a parental relationship”].) The lack of a parental relationship is further underscored by Mother’s visitation status—her visits with the Minors remained monitored throughout the three-plus-years of dependency proceedings. (See, e.g., *Noah G.*, *supra*, 247 Cal.App.4th at 1301; *Jason J.*, *supra*, 175 Cal.App.4th at 938.)

In addition, the juvenile court’s determination that termination of Mother’s parental rights would not be detrimental to the Minors was not an abuse of discretion. Both children were still very young at the time of the rights termination hearing (A.C. was 5 years old; her brother A.R-C. was 4 years old) and they had been out of Mother’s custody for more than half of their young lives. While out of Mother’s custody and in the care of the foster parents, the Minors were thriving. There are, to be sure, indications the children had a bond with Mother as a result of her consistent monitored visitation, but it was not the sort of parental bond that could or should forestall termination of parental rights in favor of a beneficial adoptive home. (*K.P.*, *supra*, 203 Cal.App.4th at 622-623 [“While the weekly two-hour visits between K.P. and his mother may have been pleasant for both parties, there was no evidence in the record (beyond [mother’s] stated belief) that termination of the parent-child

relationship would be detrimental to K.P. or that the relationship conferred benefits to K.P. more significant than the permanency and stability offered by adoption”]; *In re Helen W.* (2007) 150 Cal.App.4th 71, 81 [a friendly relationship between parent and child “is simply not enough to outweigh the sense of security and belonging an adoptive home would provide”].)

The facts here therefore stand in contrast to those in *In re E.T.* (2018) 31 Cal.App.5th 68 (*E.T.*), the case on which Mother chiefly relies. In *E.T.*, the children spent a total of 22 months living with the mother and 24 months living with their godparents. (*Id.* at 75.) The Court of Appeal reversed the order terminating parental rights because the evidence showed that the twins were “very tied to their mother,” who was shown to have provided them comfort and affection. (*Id.* at 76-78.) Unlike the mother in *E.T.*, Mother here was still struggling after three years with core components of her case plan: dealing with her history of domestic violence and safely managing both children at the same time. The Minors had spent significantly more than half of their lives away from Mother and in the care of the foster parents, and unlike the mother in *E.T.*, Mother never regained custody of the Minors during the dependency proceedings. To the contrary, Mother never progressed to even unmonitored visitation. Furthermore, there was evidence here that both Minors suffered varying degrees of distress before, during, and after their monitored visits with Mother. Under these circumstances, the juvenile court reasonably concluded continued contact with Mother would not promote the well-being of the Minors to such a degree as to outweigh the well-being they would gain in a permanent home with the foster parents.

DISPOSITION

The juvenile court's order terminating parental rights is affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.